

RICHARD S. GADDY
W. B. NEWBERRY

IBLA 82-1193

Decided October 8, 1982

Appeal from decision of Eastern States Office, Bureau of Land Management, rejecting acquired lands oil and gas lease offers. ES 19548, etc.

Vacated and remanded.

1. Oil and Gas Leases: Applications: Sole Party in Interest --
Regulations: Applicability

Where the regulation, 43 CFR 3102.2-7, requiring the offeror for an oil and gas lease to file a copy of an agreement under which a royalty interest in the lease will be conveyed to a third party is repealed, it is not proper to reject the offer for failure to comply with the repealed regulation unless there was a proper conflicting offer filed for the same land prior to the date of the repeal, which was Feb. 26, 1982.

APPEARANCES: Deborah Norwood, Esq., Midland, Texas, for appellants.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Richard S. Gaddy and W. B. Newberry appeal the Eastern States Office, Bureau of Land Management (BLM), decision of May 10, 1982, which rejected 20 acquired land oil and gas lease offers 1/ because they had indicated on each offer that they were the sole parties in interest in the offer, but that, in fact, an agreement existed under which they would assign to Shaw Petroleum, Inc., a royalty interest in any oil and gas leases which might result from

1/ The offers named in the BLM decision were: ES 19430, ES 19436, ES 19441, ES 19442, ES 19443, filed June 28, 1978; ES 19543, ES 19546, ES 19548, ES 19550, ES 19553, ES 19560, ES 19571, ES 19576, ES 19578, ES 19584, ES 19590, filed July 21, 1978; and ES 20038, ES 20039, ES 20040, ES 20041, filed Sept. 26, 1978.

the offers. The failure of the offerors to divulge the existence of the agreement not later than 15 days after filing of the offers was termed a violation of 43 CFR 3102.7.

The appeal relates only to offers ES 19548, ES 19550, ES 19553, ES 19590, ES 20038, and ES 20039. 2/

It is asserted, on appeal, that the agreement between appellants and Shaw Petroleum, Inc., does not apply to any leases in the counties here involved. The agreement covers only Craig, Bland, Tazewell, Russell, Scott, Washington, Allegheny, Botetourt, and Smyth Counties, in Virginia; and Mercer and Monroe Counties in West Virginia. A copy of the agreement, entered into February 3, 1978, attached to the appeal, verifies the assertion. Amendments #1 and #2 to the agreement made October 23, 1978, and November 27, 1978, did not change the land area involved but only the method of computing the overriding royalty interest to be conveyed.

Examination of the case files discloses that offer ES 19548 is for tracts J 4c, J 1054, J 1054a, J 1051, J 1098, and J 7 in Lee County, Virginia; offer ES 19550 is for tracts J 276-I, J 81, J 572, J 284, J 552, J 643-I, and J 643-II in Wythe County, Virginia; offer ES 19553 is for tracts J 311, J 4, and J 577 in Wise County, Virginia; offer ES 19590 is for tracts J 1298, J 1298a, J 576a, J 520, J 1090, J 252, J 576-I, J 576-II, J 1265, J 876, and J 576 in Lee County, Virginia; offers ES 20038 and ES 20039 are each for separate parts of tract J 899a in Monroe County, West Virginia. All of the land sought is within the Jefferson National Forest.

The case records do not support the BLM decision insofar as it purported to reject offers ES 19548, ES 19550, ES 19553, and ES 19590 because of their inclusion in the agreement to convey an overriding royalty interest. Each offer is for land not within any county named in the agreement. To the extent of these four offers, the BLM decision is vacated, and the case remanded for issuance of the leases, all else being regular.

[1] The case records for offers ES 20038 and ES 20039 each clearly indicate the offer is for land in Monroe County, West Virginia, one of the counties named in the agreement to convey an overriding royalty interest. Although the offerors did not comply with the requirement in 43 CFR 3102.2-7 to submit a copy of the agreement within 15 days after filing of the offers, that deficiency does not necessarily determine the case. That regulation was repealed effective February 26, 1982, 47 FR 8544 (Feb. 26, 1982). In the absence of public interest considerations or intervening rights, a regulation amendment which would benefit a pending public land matter may be applied to it. B. B. Wadleigh, 44 IBLA 11 (1979); cf. James E. Strong, 45 IBLA 386 (1980). However, an amendment of a regulation governing applications for oil and gas leases will not be applied retroactively to the detriment of an application which was filed prior to the amendment and which

2/ The BLM decision is now final as to the other 14 offers.

was in accord with the regulations in effect at the time of filing. J. J. Newman Lumber Co., A-27205 (Oct. 10, 1955). Accordingly, the BLM decision is vacated as to offers ES 20038 and ES 20039, and these cases are remanded to BLM for a determination if any conflicting offer was filed for the same land before February 26, 1982. In the absence of any such conflict, leases ES 20038 and ES 20039 may be issued, all else being regular.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is vacated, and the cases are remanded to BLM for further appropriate action consistent with this opinion.

Douglas E. Henriques
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Will A. Irwin
Administrative Judge

